

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CARLOS ALBERTO GARCIA,  
Movant,  
v.  
UNITED STATES OF AMERICA,  
Respondent.

Case No.: 19-cv1353-BEN  
12-cr-2999-BEN

**ORDER DENYING MOTION TO  
VACATE, SET ASIDE, OR  
CORRECT A SENTENCE UNDER  
28 U.S.C. § 2255**

Movant Carlos Alberto Garcia filed a Motion to Vacate, Set Aside, or Correct a Sentence pursuant to 28 U.S.C. § 2255 on March 7, 2014. Docket No. 41. The motion was denied on November 3, 2015. Order, Docket No. 47. On July 19, 2019, Garcia filed a second motion for relief pursuant to 28 U.S.C. § 2255. Docket No. 49.

Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), a district court has only limited authority to hear a claim presented in a second or successive habeas motion. “The court must deny a second or successive motion unless the court of appeals first certifies that the motion relies on a new rule of constitutional law that is retroactively applicable or presents new evidence that meets the criteria set forth in § 2255(h).” *Mitchell v. United States*, No. 18-17031, 2020 WL 2078991, at \*6 (9th Cir. Apr. 30, 2020) (citing *Burton v. Stewart*, 549 U.S. 147, 149 (2007); *Gonzalez v. Crosby*, 545 U.S. 524, 531–32 (2005)).

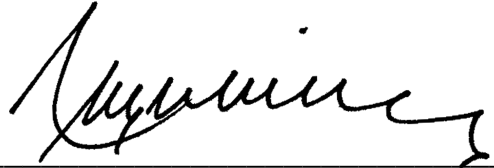
Garcia has not obtained the necessary approval from the Court of Appeals to prosecute his second motion. Therefore, the Motion to Vacate, Set Aside or Correct Sentence is **DENIED**.

A court may issue a certificate of appealability where the movant has made a “substantial showing of the denial of a constitutional right,” and reasonable jurists could

1 debate whether the motion should have been resolved differently, or that the issues  
2 presented deserve encouragement to proceed further. *See Miller-El v. Cockrell*, 537 U.S.  
3 322, 335 (2003). This Court finds that Movant has not made the necessary showing. A  
4 certificate of appealability is therefore **DENIED**.

5 **IT IS SO ORDERED.**

6 Dated: May 15, 2020



**HON. ROGER T. BENITEZ**  
United States District Court Judge